

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Application by SBC Communications Inc.,	)	
Pacific Bell Telephone Company and	)	
Southwestern Bell Communications Services, Inc.	)	CC Docket No. 02-306
for Provision of In-Region, InterLATA Services in	)	
California	)	

**COMMENTS OF  
MPOWER COMMUNICATIONS CORP.  
ON PACIFIC BELL APPLICATION  
FOR 271 AUTHORITY**

MPOWER COMMUNICATIONS CORP.

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### **Summary**

Mpower previously supported SBC/PacBell's 271 application in California because SBC provided Mpower with unbundled loops, transport and collocation in a commercially reasonable manner. SBC's inadequate billing, unreasonable collection efforts and other anti-competitive actions, however, have caused Mpower to withdraw its support for SBC's 271 application.

RBOCs are required to provide CLECs with complete, accurate, timely and auditable bills. Due to the number of errors contained in some 25,000 pages of monthly loop bills for California, these bills are effectively unauditable. Not only are the initial bills unauditable but SBC wholesale bills continue to be inaccurate and uncorrected for months at a time, thus also failing to provide timely billings.

Further, SBC collections personnel do not communicate with the SBC personnel responsible for managing billing disputes and cannot access the bill disputes through internal systems and thus, continue to show the charges as due. As a result, SBC finance and collections personnel have withheld millions of dollars SBC indisputably owes to Mpower to pressure Mpower to pay amounts Mpower has properly disputed. This is an abuse of market power.

RBOCs are required to provide other telecommunications carriers with non-discriminatory access to network elements at just and reasonable rates. In violation of both state and federal law, SBC has entered into agreements with aggregators in California to provide payphone lines to payphone service providers at illegal discounts from tariffed rates. In fact, the effective rates are below the average rates charged to CLECs for the loop alone. This is extremely anti-competitive and cannot be tolerated.

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**COMMENTS OF  
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FOR 271 AUTHORITY**

Mpower Communications Corp. ("Mpower") hereby submits its Comments on the issues raised before the Federal Communications Commission ("Commission" or "FCC") by the SBC/Pacific Bell ("SBC")<sup>1</sup> Application of September 20, 2002, for 271 authority in California.

**I. Introduction**

When interconnection and access to UNEs have been reasonably satisfactory, Mpower has not hesitated to support an RBOC's 271 application. In fact, it previously supported the SBC application for 271 authority in California because SBC provided Mpower with unbundled loops, transport and collocation in a commercially reasonable manner. Over a period of time, however, as SBC has taken over more direct control of

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<sup>1</sup> Although Mpower refers to SBC, the actions referenced are those taken by SBC management which pertain to Mpower's California operations rather than its operations in other parts of the country.

certain functions from PacBell such as billing and collections, SBC's inadequate billing, unreasonable collection efforts and other anti-competitive actions have caused Mpower to change its position. Certainly if market power is abused prior to obtaining 271 authority, it is even more likely to be abused subsequent to obtaining 271 authority. Consequently, Mpower presents the following examples of SBC actions which it believes do not meet the requirements of the 14-point checklist, as well as evidence of anti-competitive activities and abuse of market power by SBC.

## **II. Failure to Provide Accurate Wholesale Bills, Combined with Anti-Competitive Collection Practices – Checklist Item II**

Pursuant to Item 2 on the 271 Checklist, RBOCs are required to provide CLECs with complete, accurate, timely and auditable bills. The wholesale bills Mpower receives from SBC are huge. Mpower receives approximately 25,000 pages of loop bills from SBC monthly for California, along with an additional 5,000 pages of collocation, transport and SS7 bills from SBC affiliates, which together total more than a million dollars.<sup>2</sup> Due to the number of errors contained in the 25,000 pages of monthly loop bills for California, these bills are effectively unauditable. Not only are the initial bills unauditable but SBC wholesale bills continue to be inaccurate and uncorrected for months at a time, thus SBC also fails to provide timely billings.

The following are examples of recent billing inaccuracies: 1) UNE loop rates were recently reduced on an interim basis in California and were placed in zones for billing purposes. SBC inappropriately identified thousands of loops which have previously been listed in and belong in the cheaper "Zone 1" as being in the more

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<sup>2</sup> In addition, Mpower also receives about 10,000 pages of loop bills from SBC/Ameritech and about 10,000 pages of loop bills from SBC/SWBT each month.

expensive “Zone 2.” This issue was raised in July of this year and Mpower has yet to receive explanations, let alone resolution, of this issue. 2) Mpower recently discovered that it was being charged an inappropriate non-recurring charge for an “end user return” on its loop bills. An “end user return” means that SBC made a mistake on the order and that Mpower should not be charged for this mistake. SBC provides no means for CLECs to audit this erroneous charge, however. The erroneous charge is reported by SBC on a purchase order number basis, yet SBC’s monthly invoices reference only a circuit identification number. This system deficiency leaves Mpower totally dependent on SBC to identify its mistake and apply appropriate credits. 3) Mpower has been charged inappropriate non-recurring, ordering charges for UNE loops. SBC frequently charges Mpower for “manual” orders, which pertain to faxed orders, although Mpower does not fax any orders to SBC. 4) Maintenance and repair charges are so poorly tracked by SBC that Mpower and SBC have had to resort to an arbitrary formula for setting a reasonable figure. 5) SBC bills do not timely and accurately reflect disconnected lines. Thus, Mpower must dispute charges for disconnected lines for months before they are removed from the bill.

Because of the continuing inaccuracy of SBC’s wholesale bills, Mpower is required to engage in extensive dispute resolution on a monthly basis and continue to dispute the same items for a period of months. This adds to the difficulty of auditing bills, as well as adding to the number of disputes which must be filed, tracked and dealt with. This increases not only the time required to review SBC’s extremely lengthy bills but also increases the resources which must be spent on the dispute resolution process.

To make matters worse, SBC seldom follows its own prescribed dispute resolution procedures and Mpower must wait – sometimes for many months – before its disputes receive any attention. One billing dispute with SBC is over a year old. When Mpower requested an explanation of the charges, rather than providing detailed invoices and explanations of the charges in dispute, SBC requested that Mpower provide SBC with an accounting of what it thinks is owed. Needless to say, in addition to causing delay and increased expenditure of resources, such procedures cause disputes to become compounded with new issues and even more difficult to resolve.

In addition, SBC collections personnel fail to communicate with SBC personnel responsible for managing billing disputes and continue to be unable to access the bill disputes through internal systems. Consequently, they continue to show the charges as due and owing. This leads to letters threatening to cease providing new loops to Mpower because SBC collections personnel erroneously believe that Mpower has not paid undisputed charges. SBC also threatens to disconnect Mpower's existing service when SBC erroneously believes Mpower is in arrears. Since Mpower must obtain loops in a timely fashion to provision its customers, such threats require Mpower to spend additional resources to resolve those SBC errors quickly so that it can continue to buy loops.

Recently, SBC has combined some of its billing functions for its various subsidiaries. This has led to even more SBC confusion regarding what is owed, what is disputed, etc. As a result, SBC finance and collections personnel have begun to withhold millions of dollars in payments SBC has not disputed or has affirmatively admitted it owes to Mpower because they erroneously include disputed amounts in figures for what

Mpower owes. In addition, some of the disputed amounts are not even in California but are in SBC/SWBT and SBC/Ameritech territories. Thus, SBC has begun using its market power to punish Mpower for exercising its legitimate rights to dispute the many inaccuracies in SBC billings. This is not only inappropriate and unfair but is anti-competitive.

Based on the fact that SBC is using its market power against Mpower, a CLEC that has supported SBC in the past, it is clear that SBC will use its dominant position in anti-competitive ways against other competitors as well. Given the current financial troubles of the local telephone industry, the withholding of large amounts of money from competitors is likely to further weaken the position of competitors in the marketplace.

Thus, SBC fails to provide accurate and timely wholesale bills, uses its dominant position to engage in improper collection practices and fails to meet the requirements of 47 USC 271(c)(2)(B)(ii). Under these circumstances, if SBC is allowed into the long distance market in California, local exchange competition will be damaged, perhaps irreparably.

### **III. Failure to Provide Non-Discriminatory Access to Network Elements (Anti-Competitive Pricing) – Checklist Item II**

Pursuant to Item 2 on the 271 Checklist, RBOCs are required to provide other telecommunications carriers with non-discriminatory access to network elements at just and reasonable rates. It has recently and dramatically come to Mpower's attention that instead of providing network elements at uniform, tariffed rates, that SBC has entered into agreements with various aggregators in California to provide payphone lines to payphone service providers ("PSPs") at illegal discounts from its tariffed rates. In fact, as



Mpower will indicate below, the effective rates after rebates from SBC are below the average rates charged to CLECs in California for the loop alone.

Evidence indicates that SBC is attempting to monopolize and otherwise unfairly compete in the payphone line market by engaging in this unlawful rebate scheme. Under agreements entered into by SBC with one or more aggregators, PSPs can effectively obtain payphone line service at below-tariff, below-cost rates. As a result, Mpower has filed a complaint against SBC at the California Public Utilities Commission, as well as a motion for injunctive relief to require SBC to cease offering and paying such rebates to subscribers of coin operated pay telephone (“COPT”) service.

More specifically, SBC has entered into arrangements with one or more pay telephone service aggregators which provide for the payment by SBC of rebates to the pay telephone service aggregator, which in turn are passed on to the PSP when it migrates its existing service to SBC from Mpower or another competitor. If the PSP commits itself to taking new service from SBC for one year, the up-front rebate is \$237.00 per line. Such a rebate effectively offsets the entire non-recurring charge for establishing new service and also reduces the effective monthly recurring charge from \$19.26 per month to \$8.32. The average unbundled loop cost (on an interim basis) is currently \$9.93.

These rebate arrangements appear to be available irrespective of whether the PSP subscribes to any other revenue-generating SBC services and only be contingent upon the PSP migrating all of its existing payphone lines to SBC. Mpower believes that SBC’s cost of providing retail basic COPT service exceeds its net revenues for such service in cases where the rebates apply.

Mpower's wholesale costs of service, alone, are higher than SBC's net charges for retail basic COPT service where the rebate arrangements apply. Therefore, Mpower cannot economically compete against this illegal price squeeze by SBC. As a result, Mpower and other competitors will suffer substantial losses, as well as the loss of competitive opportunities as a result of SBC's pricing and rebate arrangements for basic COPT service. Mpower has already been threatened with loss of a customer to which it currently provides thousands of payphone lines. Continued service to other Mpower payphone line customers is also in jeopardy.

Based upon these facts, Mpower believes that SBC has no legitimate business reason for entering into these rebate arrangements and has done so solely for the purpose of monopolizing COPT service and harming competitors. Such actions violate state laws against charging other than tariffed rates, against charging below-cost, anti-competitive and predatory prices and also fails to meet the requirements of 47 USC 271(c)(2)(B)(ii) to provide non-discriminatory access to network elements at just and reasonable rates.

Mpower has asked the California Commission to terminate the rebate arrangements immediately, to require COPT service customers to return any rebates received pursuant to these arrangements, as well as fines to SBC for each line subject to such rebates.

#### **IV. Conclusions**

Because of the continuing inaccuracy of SBC's wholesale bills, Mpower is required to engage in extensive dispute resolution on a monthly basis and continue to dispute the same items for a period of months. To make matters worse, SBC seldom follows its own prescribed dispute resolution procedures and Mpower must wait, often for many months,

before its disputes receive any attention. Then, based on inaccurate information and a lack of internal communication, SBC has withheld millions of dollars SBC indisputably owes to Mpower in order to pressure Mpower to pay properly disputed amounts. If SBC is allowed into the long distance market in California with its current policy of exercising illegal self-help to damage the cash-flow position of competitors, local exchange competition will be destroyed.

Based upon such a use of market power against Mpower, a CLEC that has supported SBC in the past for its good operational performance, it is clear that SBC will use its dominant position in anti-competitive ways to bully other competitors. Under these circumstances, if SBC is allowed into the long distance market in California, local exchange competition will be irreparably damaged. The Commission must not allow SBC to benefit from its anti-competitive tactics.

SBC's unsatisfactory billing system, improper collection procedures, unfair exertion of market power and anti-competitive pricing actions violate the requirements of Section 271. SBC's request for 271 authority in California should be denied.

Respectfully submitted,

By \_\_\_\_\_  
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